

Patent No. 4,878,915 to Brantigan ('915) and rejected claim 137 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan '915 in view of U.S. Patent No. 4,772,286 to Goble.

Independent claims 95 and 108 recite that the "disc penetrating extension... for insertion into the lateral aspect of the disc space from a position anterior to the transverse processes of the adjacent vertebrae" has "a portion for bearing against each of the adjacent endplates of the adjacent vertebral bodies" and that the disc penetrating extension has "a length that is less than the transverse width of the vertebral bodies" and "greater than the depth" of the spinal disc or disc space intermediate the two adjacent vertebral bodies. Independent claim 139 recites that the disc penetrating extension extends from the distal end of the guard member and that the disc penetrating extension is separable from the proximal end of the guard and that the disc penetrating extension has "a portion for bearing against each of the adjacent endplates."

Applicant submits that neither Brantigan '915, Goble, nor any other art of record, either alone or in proper combination, teaches, discloses or suggests the structure of Applicant's claimed invention.

Brantigan '915 discloses instrumentation for preparing an installation space from the posterior to anterior aspects of the vertebrae. In particular, Brantigan '915 discloses a drill guard (22) with teeth or prongs (23) penetrating and anchored in the posterior side of both vertebrae.(Col. 5, lines 41-45). Brantigan '915 discloses a tool assembly (24) having a stem (25) with a threaded end (26) mating with tapped hole (19) in end face (11a) of plug (11) and mounted in an easily grasped handle (27) at the opposite end. The plug (11) is mounted on the tool and the tool is manipulated to seat the plug on the prepared sites to be bottomed on the blind ends 16 of the sites 15. After positioning of the plug on the sites, the tool is detached from the plug. (Col. 6, lines 1-7).

Brantigan '915 does not disclose a "disc penetrating extension for insertion into the lateral aspect of the disc space from a position anterior to the transverse processes of the adjacent vertebrae" having "a portion for bearing against each of the adjacent endplates of the adjacent vertebral bodies" or a "disc penetrating extension having a height less than the height of said body and a length that is less than the transverse width of the vertebral bodies" and "greater than the depth" of the spinal disc or disc space as recited in independent claims 95 and 108, respectively. Moreover, Brantigan '915 does not disclose a "disc penetrating extension extending from said distal end of said guard" and "being separable from said proximal end of said guard" as recited in independent claim 139.

Applicant submits that independent claims 95, 108, and 139 are allowable over Brantigan '915. Dependent claims 96-107 and 109-138, are allowable at least due to their dependency from allowable independent claims 97 and 108, respectively. It is submitted that the rejection of claims 95-101, 108-113, 116-121, 124-127, 129, 130, 132-136, and 139 under 35 U.S.C. § 102(b) as being anticipated by Brantigan '915 and the rejection of claim 137 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan '915 in view of Goble have been overcome.

In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the amendments to the claims and the preceding comments. Issuance of a timely notice of allowance of the claims is earnestly solicited.

If there are any fees due in connection with the filing of this response, please charge our Deposit Account Number 50-1068. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for in the papers accompanying this response, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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